

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

7 \* \* \*

8 MARCEL D. THOMPSON,

Case No. 3:17-cv-00330-MMD-WGC

9 Petitioner,

ORDER

10 v.

11 ISIDRO BACA, *et al.*,

12 Respondents.  
13

14 Following upon the Federal Public Defender's notice of conflict (ECF No. 6), it is  
15 ordered that the provisional appointment of the Federal Public Defender is withdrawn and  
16 that Mark D. Eibert, Esq., Attorney at Law, P.O. Box 1126, Half Moon Bay, CA 94019,  
17 (650) 638-2380, is appointed as counsel for petitioner pursuant to 18 U.S.C. §  
18 3006A(a)(2)(B). Counsel will represent petitioner in all federal proceedings related to this  
19 matter, including any appeals or *certiorari* proceedings, unless allowed to withdraw.

20 It is further ordered that, within ninety (90) days of entry of this order, petitioner  
21 must show cause in writing through counsel why the petition is not subject to dismissal  
22 as a successive petition following upon the denial on the merits of petitioner's prior federal  
23 petition in No. 3:05-cv-00468-HDM-RAM.

24 It is further ordered that nothing herein forecloses petitioner from seeking other  
25 appropriate relief in this Court or the Court of Appeals and/or requesting that petitioner be  
26 allowed first to file a counseled amended petition prior to addressing the successiveness  
27 of the petition and/or other issues. In all events, any deadline established and/or any  
28 extension thereof will not signify any implied finding of a basis for tolling during the time


1 period thereof will not signify any implied finding of a basis for tolling during the time period  
2 established. Petitioner at all times remains responsible for calculating the running of the  
3 federal limitation period and timely presenting claims. That is, by setting a deadline and/or  
4 by granting any extension thereof, the Court makes no finding or representation that the  
5 petition, any amendments thereto, and/or any claims contained therein are not subject to  
6 dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

7 It is further ordered that respondents may file a response to petitioner's show-  
8 cause response within thirty (30) days of service and that petitioner may file a reply within  
9 thirty (30) days of service of the response.

10 Following entry of Mr. Eibert as counsel of record on the docket, the Clerk of Court  
11 will provide counsel, upon his request, with a single set of electronic copies of all prior  
12 filings herein in a manner consistent with the Clerk's current practice, such as  
13 regeneration of notices of electronic filing.

14 The Clerk further will send a copy of this order to the petitioner in proper person at  
15 the last institutional address in the record and reflect said transmittal either via the notice  
16 of electronic filing or on the docket, in a manner consistent with the Clerk's current  
17 practice.

18 DATED THIS 27<sup>th</sup> day of November 2017.

19  
20   
21 \_\_\_\_\_  
22 MIRANDA M. DU  
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28